[Case Title] In re:George W. & Jeanette M. Adams, Debtor's
[Case Number] 89-05378
[Bankruptcy Judge] Steven W. Rhodes
[Adversary Number]XXXXXXXXXX
[Date Published] January 7, 1993

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
BANKRUPTCY COURT

IN RE: 1993 WL 131435

GEORGE W. ADAMS and
JEANETTE M. ADAMS, Case No. 89-05378-R

Debtors. Chapter 13
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MEMORANDUM OPINION

I.

This matter is before the Court on the Debtor's Motion for Sanctions against the United States for willful violation of the automatic stay. The relevant facts are not disputed.

George W. and Jeanette M. Adams filed their petition for Chapter 13 protection on July 20, 1989. On November 3, 1989, the Internal Revenue Service (IRS) submitted a proof of claim against the Debtors in the amount of $20,313.25 for income taxes not paid between 1984 and 1988, including interest and penalties.

On February 20, 1990 this Court confirmed the Debtor's Plan of Reorganization which provided 100% payment to unsecured creditors over 23 months. The Plan was later extended to continue for 37 months, still paying creditors 100%. The Debtors made all required payments under the plan and the

Chapter 13 Trustee filed a report stating that all creditors had been paid and recommending discharge on June 29, 1992. The Court discharged the Debtors on July 10, 1992.

The IRS sent George Adams two notices dated May 25, 1992. The first indicates that the Adams' 1989 tax refund of $20.34 would be applied to his tax liability for 1988. The second states that both Debtors owed a total of $1,294.57 tax liability for 1988 including interest and penalties.

On July 17, 1992, the Debtors filed this motion for sanctions against the IRS for willful violation of the automatic stay. The motion is based on § 362(h) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (1989) (the Code). The Court originally granted the motion on August 18, 1992, following receipt of a certification of non-response. See Bankr. E.D. Mich. R. 2.08. On August 24, 1992, the IRS filed a response opposing the motion for sanctions. The parties agreed to set aside the order granting sanctions and submitted briefs on the merits. The Court took the matter under advisement following a hearing on November 9, 1992 and now renders its opinion.

II.

Section 362(h) of the Code provides:

> An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages.

11 U.S.C. § 362(h) (1989). Thus, in order to recover, the debtor must show willful violation of the stay, injury and actual damages. The Government's primary defense is sovereign immunity. Because it appears that this defense has merit, the Court only addresses that issue.

The concept of sovereign immunity is that the United States and its agents may not be sued unless it consents to the suit. United States v. Testan, 424 U.S. 392, 399 (1976). The Government's waiver of this immunity must be "unequivocally expressed" and strictly construed in its favor. United States v. Nordic Village, Inc., ___ U.S. ____, 112 S. Ct. 1011, 1014-15 (1992). Such waiver is usually accomplished by means of statute, such as the Federal Tort Claims Act.

The Debtors here assert that the Government has waived immunity to suit for a claim for violation of the automatic stay by the sovereign immunity section of the Code, § 106. The Debtors specifically argue that the waiver is "unequivocally expressed" in § 106(a) which provides:

> A governmental unit is deemed to have waived sovereign immunity with respect to any claim against such

> governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which such governmental unit's claim arose.

11 U.S.C. § 106(a).[1] The Debtors must demonstrate that a) the IRS has a claim, b) their claim against the IRS is property of their bankruptcy estate, and c) their claim arose from the same transaction or occurrence of the claim of the IRS. The IRS argues that the Debtors have not shown any of these conditions.

The Court concludes that the debtors have not established that their claim against the IRS for violating the automatic stay is property of the estate. Code section 1327(b) provides:

> Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

11 U.S.C. § 1327(b) (1989).

In this case, neither the plan nor the order confirming plan provide otherwise. Thus, the debtors' claim is their own claim and not property of the estate.

The Court notes that the language of § 1327(b) conflicts with the provisions in §§ 541 and 1306, which indicate that

[1]The Debtors originally asserted that sovereign immunity was also waived based on 11 U.S.C. § 106(c). The IRS responded that a finding of such waiver was precluded by the Supreme Court's decision in Nordic Village, 112 S. Ct. at 1011. The Debtors have waived that argument, so this Court will not discuss it.

property of the estate includes all causes of action which arise after the commencement of the case but before the case is closed, dismissed or converted.

Here the plan has been confirmed and fully executed, but the case has not yet been closed, dismissed or converted. The parties have not cited, and the Court has not found, any cases presenting the same circumstances.

The Court notes that the prior decisions are split in interpreting the relationship between § 1327(b) and § 1306(a). One line of cases holds that no property of the estate remains following the confirmation of a Chapter 13 plan. See, e.g., In re Petruccelli, 113 B.R. 5, 15 (Bankr. S.D. Cal. 1990); In re Lambright, 125 B.R. 733, 734 (Bankr. N.D. Tex. 1991); and In re Stark, 8 B.R. 233, 234 (Bankr. N.D. Ohio 1981). The other line holds that property which is necessary to effectuate the plan remains property of the estate post-confirmation. See, e.g., In re Price, 130 B.R. 259, 269-70 (N.D. Ill. 1991); In re Clark, 71 B.R. 747, 750 (Bankr. E.D. Pa. 1987).

However, neither interpretation will support the debtors' position in this case. The trustee's final report indicates that all of the creditors had been paid in full on April 14, 1992, over one month before the IRS' collection efforts. The debtors' recovery of attorney's fees or sanctions under § 362(h) is not necessary for successful completion of the plan and will not benefit the creditors in any way. Indeed, the only reason that the case had not been closed prior to the IRS action was some administrative delay.

Thus, the debtors have not met all of the requirements of § 106(a) and sovereign immunity has not been waived.

The debtors' motion for sanctions is therefore DENIED.

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STEVEN W. RHODES
U.S. Bankruptcy Judge

Entered: __________